

SENATE BILL No. 211

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-14-1-1; IC 9-13-2; IC 9-17; IC 9-18; IC 9-22-3-11; IC 9-23; IC 9-29-8-4.

Synopsis: Motor vehicle documentation and sales. Requires certain information to accompany a certificate of title for a vehicle brought from a foreign country. Requires a dealer to furnish a valid certificate of title to a purchaser in not more than 60 days. Requires an assembled vehicle to bear an identification number and that its certificate of title contain the words "assembled vehicle". Requires a vehicle that does not bear its original or unaltered identification number to receive a special identification number from the bureau of motor vehicles (BMV). Permits a motor vehicle dealer to issue a second interim plate to the vehicle's owner. Permits the owner of a certain damaged or wrecked vehicle who retains the vehicle to apply to the BMV for a certificate of salvage title. Changes the title of the motor vehicle sales advisory board to the motor vehicle sales review board (board), adds a ninth member, and authorizes the board to assist the BMV in the regulation of vehicle manufacturers, distributors, and dealers, including repealing the authority for the BMV to institute an injunction compelling regulation and replacing its authority with that of the board's. Requires a filing fee for a protest or dispute filed with the board by certain persons engaging in the business of buying or selling motor vehicles. Authorizes the board to impose a civil penalty for a violation of a regulation of vehicle manufacturers, distributors, or dealers. Requires the filing fee and civil penalties to be deposited in the motor vehicle highway account. Makes it an unfair practice for a person to act as a broker in the advertising, buying, or selling of any new or used vehicle. Repeals and relocates requirements for an application for a special identification number on a motor vehicle.

Effective: July 1, 2002.

Clark, Long

January 7, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.



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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 211

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-14-1-1 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2002]: Sec. 1. As used in this chapter:

(1) "Motor vehicle highway account" means the account of the general fund of the state known as the "motor vehicle highway account", to which is credited collections from motor vehicle registration fees, licenses, driver's and chauffeur's license fees, gasoline taxes, auto transfer fees, certificate of title fees, weight taxes or excise taxes, **civil penalties and fees collected under IC 9-23-1**, and all other similar special taxes, duties or excises of all kinds on motor vehicles, trailers, motor vehicle fuel, or motor vehicle owners or operators.

(2) The term "department" refers to the Indiana department of transportation.

(3) The term "highways" includes roadway, rights of way, bridges, drainage structures, signs, guard rails, protective structures in connection with highways, drains, culverts, and bridges and the substructure and superstructure of bridges and approaches thereto



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and streets and alleys of cities or towns.

(4) The term "construction" means the planning, supervising, inspecting, actual building, draining, and all expenses incidental to the construction of a highway.

(5) The term "reconstruction" means a widening or a rebuilding of the highway or any portion thereof.

(6) The term "maintenance", when used in reference to cities, towns and counties as applied to that part of the highway other than bridges, means the constant making of needed repairs to preserve a smooth surfaced highway, adequately drained, marked and guarded by protective structures for public safety, and, as to bridges, means the constant making of needed repairs to preserve a smooth surfaced highway thereon and the safety and preservation of the bridge and its approaches, together with the substructure and superstructure thereof; and such term also means and includes the acquisition and use, in any manner, of all needed equipment, fuel, materials, and supplies essential and incident thereto.

(7) The term "vehicle registration" means the number of vehicles subject to registration under IC 9-18 which are registered thereunder, and, when used with respect to the state, shall mean the number of vehicles registered in the state and when used in respect to a county, city, or town shall mean the number of vehicles registered by owners resident in the county, city, or town.

SECTION 2. IC 9-13-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 5.5. "Assembled vehicle", for purposes of IC 9-17-4, has the meaning set forth in IC 9-17-4-0.3.**

SECTION 3. IC 9-13-2-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.5. "Board", for purposes of IC 9-23-1, has the meaning set forth in IC 9-23-1-0.5.**

SECTION 4. IC 9-13-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15. "Broker", ~~means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new or used motor vehicle and who is not:~~

~~(1) a dealer or an employee of a dealer;~~

~~(2) a distributor or an employee of a distributor; or~~

~~(3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction: for purposes of IC 9-23-3,~~

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has the meaning set forth in IC 9-23-3-0.5.

SECTION 5. IC 9-13-2-75 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 75. (a) "Identification number", for purposes of IC 9-18-8-15, has the meaning set forth in IC 9-18-8-15(b).

(b) "Identification number", for purposes of IC 9-17-4, has the meaning set forth in IC 9-17-4-0.5.

SECTION 6. IC 9-13-2-185 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 185. "Transfer dealer" means a person other than a dealer, manufacturer, ~~or~~ wholesale dealer ~~or broker~~ who has the necessity of transferring a minimum of twelve (12) motor vehicles during a license year as part of the transfer dealer's primary business function.

SECTION 7. IC 9-17-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5.5. (a) If an application for a certificate of title is for a motor vehicle brought into Indiana from a foreign country, the application must be accompanied by:

- (1) the ownership document, including, but not limited to, a:
 - (A) new vehicle information statement (manufacturer's certificate of origin);
 - (B) vehicle title; or
 - (C) registration if no title fully describing the vehicle has been issued by the foreign county;
- (2) a verification indicating that the motor vehicle has been imported legally into the United States and complies with all federal safety requirements;
- (3) a record of inspection of the motor vehicle signed by a law enforcement officer (as defined in IC 3-6-6-36) or a United States Customs Service officer verifying the motor vehicle identification number;
- (4) a federal odometer statement indicating the motor vehicle mileage; and
- (5) a statement indicating if a conversion from kilometers to miles has been performed.

(b) The bureau shall adopt rules under IC 4-22-2 to carry out this section.

SECTION 8. IC 9-17-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) If a vehicle for which a certificate of title has been issued is sold or has the ownership transferred, the person who holds the certificate of title must do the following:

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(1) Endorse on the certificate of title an assignment of the certificate of title with warranty of title, in a form printed on the certificate of title, with a statement describing all liens or encumbrances on the vehicle.

(2) Except as provided in subdivisions (3), ~~and~~ (4), **and (5)**, deliver the certificate of title to the purchaser or transferee at the time of the sale or delivery to the purchaser or transferee of the vehicle, if the purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(3) In the case of a sale or transfer between vehicle dealers licensed by this state or another state, deliver the certificate of title within twenty-one (21) days after the date of the sale.

(4) Deliver the certificate of title to the purchaser or transferee within twenty-one (21) days after the date of sale to the purchaser or transferee of the vehicle, if all of the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed by the state under IC 9-23.

(B) The vehicle dealer is not able to deliver the certificate of title at the time of sale.

(C) The vehicle dealer reasonably believes that it will be able to deliver the title, without a lien or an encumbrance on the title, within the twenty-one (21) day period.

(D) The vehicle dealer provides the purchaser or transferee with an affidavit under section 3.1 of this chapter.

(E) The purchaser or transferee has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

(5) Deliver the certificate of title to the purchaser or transferee not later than sixty (60) days after the date of sale of the vehicle, if all the following conditions exist:

(A) The seller or transferor is a vehicle dealer licensed under IC 9-23-2.

(B) The vehicle dealer is not able to deliver the certificate of title at the time of sale.

(C) The vehicle dealer has a written verification from a third party that holds the title regarding the inability of the third party to deliver the title within twenty-one (21) days.

(D) The vehicle dealer provides the purchaser or transferee with an affidavit under section 3.1 of this chapter.

(E) The purchaser or transferee has made all agreed upon

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1 **initial payments for the vehicle, including delivery of a**
 2 **trade-in vehicle without hidden or undisclosed statutory**
 3 **liens.**

4 (b) A licensed dealer may offer for sale a vehicle for which the
 5 dealer does not possess a certificate of title, if the dealer can comply
 6 with subsection (a)(3), ~~or~~ (a)(4), **or (a)(5)** at the time of the sale.

7 (c) A vehicle dealer who fails to deliver a certificate of title within
 8 the time specified under this section is subject to the following civil
 9 penalties:

10 (1) One hundred dollars (\$100) for the first violation.

11 (2) Two hundred fifty dollars (\$250) for the second violation.

12 (3) Five hundred dollars (\$500) for all subsequent violations.

13 Payment shall be made to the bureau and deposited in the state general
 14 fund. In addition, if a purchaser or transferee does not receive a valid
 15 certificate of title within the time specified by this section, the
 16 purchaser or transferee shall have the right to return the vehicle to the
 17 vehicle dealer ten (10) days after giving the vehicle dealer written
 18 notice demanding delivery of a valid title certificate and the dealer's
 19 failure to deliver a valid title certificate within that ten (10) day period.
 20 Upon return of the vehicle to the dealer in the same or similar condition
 21 as delivered to the purchaser or transferee under this section, the
 22 vehicle dealer shall pay to the purchaser or transferee the purchase
 23 price plus sales taxes, finance expenses, insurance expenses, and any
 24 other amount paid to the dealer by the purchaser. If the dealer's
 25 inability to timely deliver a valid certificate of title results from the acts
 26 or omissions of a third party who has failed to timely deliver a valid
 27 certificate of title to the dealer, the dealer is entitled to claim against
 28 the third party all damages sustained by the dealer in rescinding the
 29 dealer's sale with the purchaser or transferee, including the dealer's
 30 reasonable attorney's fees.

31 (d) If a vehicle for which a certificate of title has been issued by
 32 another state is sold or delivered, the person selling or delivering the
 33 vehicle must deliver to the purchaser or receiver of the vehicle a proper
 34 certificate of title with an assignment of the certificate of title in a form
 35 prescribed by the bureau.

36 (e) The original certificate of title and all assignments and
 37 subsequent reissues of the certificate of title shall be retained by the
 38 bureau and appropriately classified and indexed in the most convenient
 39 manner to trace title to the vehicle described in the certificate of title.

40 SECTION 9. IC 9-17-3-3.1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3.1. The affidavit
 42 required by IC 9-17-3-3(a)(4) shall be printed in the following form:

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STATE OF

INDIANA)

) ss:

COUNTY OF _____)

I affirm under the penalties for perjury that all of the following are true:

(1) That I am a dealer licensed under ~~IC 9-23-1~~ **IC 9-23**.

(2) That I cannot deliver a valid certificate of title to the retail purchaser of the vehicle described in paragraph (3) at the time of sale **on (date of sale _____)** of the vehicle to the retail purchaser. The identity of the previous seller or transferor is _____. I expect to deliver a valid and transferable certificate of title on or about ~~(day)~~ _____ (date) _____ from the (State of) _____ to the purchaser.

(3) That I will undertake reasonable commercial efforts to produce the valid certificate of title. The vehicle identification number is _____.

(4) That if the retail purchaser or transferee does not receive a valid certificate of title within a time specified in IC 9-17-3-3, the purchaser or transferee has the right to return the vehicle to me in the same or similar condition ten (10) days after giving me written notice demanding delivery of a valid certificate of title within that ten (10) day period, for a refund of the purchase price plus sales tax, finance expenses, insurance expenses, and any other amount paid to me.

(5) That if I cannot timely deliver a valid certificate of title due to the acts or omissions of a third party who has failed to deliver a valid certificate of title to me, I realize that I am entitled by IC 9-17-3-3 to claim against the third party all damages sustained by me in rescinding the sale with the purchaser or transferee, including my reasonable attorney's fees.

Signed _____, Dealer

By _____

Dated _____, _____

CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AFFIDAVIT.

Customer Signature

SECTION 10. IC 9-17-4-0.3 IS ADDED TO THE INDIANA CODE



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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.3. As used in this chapter, "assembled vehicle" means:**

(1) a motor vehicle, excluding a motorcycle, that has had the:

(A) frame;

(B) chassis;

(C) cab; or

(D) body;

replaced; or

(2) a motorcycle that has had the:

(A) frame; or

(B) engine;

replaced. The term includes but is not limited to glider kits, fiberglass body kits, and vehicle reproductions or replicas, and includes motor vehicles that have visible and original vehicle identification numbers.

SECTION 11. IC 9-17-4-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.5. As used in this chapter, "identification number" means a distinguishing number assigned by the bureau to a privately assembled motor vehicle, semitrailer, or recreational vehicle.**

SECTION 12. IC 9-17-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2. A certificate of title may not be issued for a privately assembled motor vehicle, semitrailer, or recreational vehicle that does not have a distinctive identification number stamped on the motor vehicle, semitrailer, or recreational vehicle or permanently attached to the motor vehicle, semitrailer, or recreational vehicle until the person who owns the motor vehicle, semitrailer, or recreational vehicle has:**

(1) obtained from the bureau an identification number designated by the bureau; and

(2) stamped **or permanently attached** the identification number in a conspicuous place on the frame of the motor vehicle, semitrailer, or recreational vehicle.

SECTION 13. IC 9-17-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 4. A certificate of title issued under this chapter must contain the following:**

(1) A description and other evidence of identification of the motor vehicle, semitrailer, or recreational vehicle as required by the bureau.

(2) A statement of any liens or encumbrances that the application



shows to be on the certificate of title.

(3) The conspicuous designation "ASSEMBLED VEHICLE" on the front of the title.

SECTION 14. IC 9-17-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) Except as provided under subsection (b), a person who violates this chapter commits a ~~Class C infraction~~. **Class D felony.**

(b) A person who knowingly damages, removes, covers, or alters a ~~special engine~~ **an identification number issued by the bureau under this chapter** commits a Class C felony.

SECTION 15. IC 9-18-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. As used in this chapter, "motor vehicle part" means the **following**:

(1) ~~engine~~; **For a motorcycle:**

(A) a frame; or

(B) an engine;

(2) ~~frame~~; **For a passenger motor vehicle, a:**

(A) frame;

(B) chassis; or

(C) body;

(3) ~~chassis~~; **For a truck or a tractor, a:**

(A) frame;

(B) chassis;

(C) cab; or

(D) body; or

(4) **For a trailer, semitrailer, or recreational vehicle, a;**

(A) chassis; or

(B) body;

of ~~a~~ **the** motor vehicle.

SECTION 16. IC 9-18-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. **(a)** Upon receipt of an application, together with the fee specified under IC 9-29 for a special identification number, the bureau shall issue to the person who submitted the application, written permission to make ~~or stamp~~ a ~~special identification number~~ **metal plate or sticker bearing the special identification number to affix to the motor vehicle** in a place on the motor vehicle to be designated by the bureau.

(b) If the original identification number is on the vehicle or visible, the new special identification number must be affixed so as not to cover the original identification number.

SECTION 17. IC 9-18-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. (a) The bureau may

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not register a motor vehicle without an identification number or issue a **license plate certificate of title**, for the operation of a motor vehicle except as specified under this chapter.

(b) This section does not prevent a manufacturer or a manufacturer's agent, other than a dealer, from doing the manufacturer's own numbering on motor vehicles of parts removed or changed and replacing the numbered parts.

SECTION 18. IC 9-18-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) Before issuing a **license plate certificate of title**, the bureau shall require the person applying for the **license plate certificate of title** to sign a statement that the special identification number assigned to be placed on the motor vehicle has been put on in a workmanlike manner.

(b) The statement described under subsection (a) shall be certified by:

- (1) a chief of police;
- (2) a sheriff; or
- (3) another convenient peace officer;

that the chief of police, sheriff, or peace officer has inspected the motor vehicle and found the identification number to be attached to the motor vehicle as required by this chapter.

(c) This section does not prevent a manufacturer or a manufacturer's agent, other than a dealer, from doing the manufacturer's own numbering on motor vehicles of parts removed or changed and replacing the numbered parts.

SECTION 19. IC 9-18-8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) A person who operates a motor vehicle on which the **engine identification** number has been removed, defaced, destroyed, obliterated, or concealed, when application has not been made to the bureau for permission to put on a new number, commits a Class C infraction.

(b) If a person who violates subsection (a) cannot, to the satisfaction of the court, establish the person's ownership of the motor vehicle, the motor vehicle shall be confiscated by the court and sold. The proceeds from the sale shall be used to pay the fine and costs of prosecution, and the balance, if any, shall be deposited in the motor vehicle highway account fund.

(c) If the fine and costs are not paid within thirty (30) days after judgment is rendered under this section, the court shall proceed to advertise and sell the motor vehicle in the manner provided by law for the sale of personal property under execution.

(d) If at any time the motor vehicle remains in the custody of the

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1 court or the court's officers under this section the owner appears and
 2 establishes the owner's title to the motor vehicle to the satisfaction of
 3 the court, the motor vehicle shall be returned to the owner. The owner
 4 shall then make application for and may obtain ~~a special engine an~~
 5 **identification number and title** as provided in ~~IC 9-17-4-5~~ **IC 9-17-4**.
 6 The owner may then use the motor vehicle upon proper registration.

7 SECTION 20. IC 9-18-26-10 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) The bureau may
 9 issue an interim license plate to a dealer or manufacturer who is
 10 licensed and has been issued a license plate under section 1 of this
 11 chapter.

12 (b) The bureau shall prescribe the form of an interim license plate
 13 issued under this section. However, a plate must bear the assigned
 14 registration number and provide sufficient space for the expiration date
 15 as provided in subsection (c).

16 (c) Whenever a dealer or manufacturer sells a motor vehicle, the
 17 dealer or manufacturer may provide the buyer with an interim license
 18 plate. The dealer shall, in the manner provided by the bureau, affix on
 19 the plate in numerals and letters at least three (3) inches high the date
 20 on which the interim license plate expires.

21 (d) An interim license plate authorizes a motor vehicle owner to
 22 operate the vehicle for a maximum period of thirty-one (31) days after
 23 the date of delivery of the vehicle to the vehicle's owner or until a
 24 regular license plate is issued, whichever occurs first. **However, if a**
 25 **third party is responsible for a delay in delivery of the**
 26 **unencumbered assigned title to the dealer for the vehicle's owner,**
 27 **the dealer may issue a second interim plate to the vehicle's owner**
 28 **for an additional thirty-one (31) days upon receipt of written**
 29 **identification from the third party regarding the inability to**
 30 **deliver the title in a timely manner. The verification must be**
 31 **attached to and made a part of the dealer's interim plate log. Not**
 32 **more than two (2) interim license plates may be issued.**

33 (e) A motor vehicle that is required by law to display license plates
 34 on the front and rear of the vehicle is only required to display a single
 35 interim plate.

36 SECTION 21. IC 9-22-3-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. (a) This section
 38 applies to the following persons:

39 (1) An insurance company or other person that has acquired a
 40 wrecked or damaged motor vehicle, motorcycle, semitrailer, or
 41 recreational vehicle that meets at least one (1) of the criteria set
 42 forth in section 3 of this chapter and the ownership of which is not

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evidenced by a certificate of salvage title.

(2) An insurance company that has made and paid an agreed settlement for the loss of a stolen motor vehicle, motorcycle, semitrailer, or recreational vehicle.

(3) A person who was the owner of a motor vehicle, motorcycle, semitrailer, or recreational vehicle at the time that the vehicle was damaged or wrecked and who has entered into an agreed settlement from an insurance company that was within the criteria described in section 3(a)(1) of this chapter, and who is retaining the damaged or wrecked motor vehicle, motorcycle, semitrailer, or recreational vehicle.

(b) A person who owns or holds a lien upon a vehicle described in subsection (a) shall assign the certificate of title to the person described in subsection (a). The insurance company or other person **who has entered into an agreed settlement as described in subsection (a)(3)** shall apply to the bureau within thirty-one (31) days after receipt of the certificate of title for a certificate of salvage title for each salvage or stolen vehicle subject to this chapter. The insurance company or other person shall surrender the certificate of title to the department and pay the fee prescribed under IC 9-29-7 for a certificate of salvage title.

~~(c) A person who was the owner of a motor vehicle, motorcycle, semitrailer, or recreational vehicle at the time that the vehicle became wrecked or damaged may not be considered to have acquired that vehicle within the meaning of this section.~~

SECTION 22. IC 9-23-1-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.5. As used in this chapter, "board" means the motor vehicle sales review board.**

SECTION 23. IC 9-23-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. The motor vehicle sales ~~advisory review~~ board is established to ~~advise assist~~ the bureau in the administration of this article.

SECTION 24. IC 9-23-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) The ~~advisory~~ board is composed of the commissioner and ~~eight (8)~~ **nine (9)** persons **who have maintained continuous residency in Indiana for the two (2) years before appointment**, appointed by the governor as follows:

(1) Two (2) of the appointed members must be franchised new motor vehicle dealers as follows:

(A) One (1) member must have sold less than seven hundred fifty (750) new motor vehicles in the year before the member's appointment.

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(B) One (1) member must have sold more than seven hundred forty-nine (749) new motor vehicles in the year before the member's appointment.

(2) Two (2) of the appointed members must represent the automobile manufacturing industry. ~~and must have been Indiana residents for a period of two (2) years immediately preceding their appointment.~~

(3) ~~Two (2)~~ **Three (3)** of the appointed members must represent the general public and may not have any direct interest in the manufacture or sale of motor vehicles.

(4) One (1) member must represent used motor vehicle dealers that are not franchised new motor vehicle dealers.

(5) One (1) member must represent used motor vehicle auctioneers.

(b) Not more than ~~four (4)~~ **five (5)** members of the board may be of the same political party.

SECTION 25. IC 9-23-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A member appointed under section 2 of this chapter serves a three (3) year term. A person may not serve more than two (2) consecutive full terms. Each appointed member serves until the member's successor is duly appointed and qualified.

(b) **A member who tenders a written resignation serves until the resignation is accepted by the chairman.**

(c) A member may be removed for good cause.

~~(c)~~ **(d)** A vacancy shall be filled by appointment of the governor for the unexpired term.

SECTION 26. IC 9-23-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. Members of the ~~advisory~~ board are entitled to receive the expenses and per diem allowed by law. Membership on the ~~advisory~~ board does not constitute the holding of a public office.

SECTION 27. IC 9-23-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. The commissioner shall serve as chairman of the ~~advisory~~ board. The ~~advisory~~ board shall elect a vice chairman and secretary from the appointed members during the first ~~month~~ **meeting** of each year. The vice chairman and secretary serve until their successors are duly appointed and qualified and may be removed for good cause.

SECTION 28. IC 9-23-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. The ~~advisory~~ board shall meet during the first month of each year. Additional meetings

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may be convened at the call of the commissioner or the written request of any three (3) members. **The board shall:**

- (1) adopt rules to hold and conduct hearings concerning all matters within its authority;**
- (2) keep a record of all meetings and transactions;**
- (3) adopt rules to carry out its business; and**
- (4) adopt a schedule of civil penalties for violations of IC 9-17-8, IC 9-18-26, IC 9-18-27, IC 9-22-4, and this article.**

SECTION 29. IC 9-23-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. Five (5) members of the ~~advisory~~ board constitute a quorum for doing business. The majority vote of the members of the quorum, present and voting, is required for the passage of a matter put to a vote of the ~~advisory~~ board. **The chairman shall vote only in the case of a tie of the voting members and shall not vote in a hearing initiated under section 8(1)(B) of this chapter.**

SECTION 30. IC 9-23-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. The ~~advisory~~ board is vested with the following powers:

- (1) ~~To consult with and advise the bureau.~~ **conduct hearings on:**
 - (A) protests or disputes arising under this article initiated by any person listed in IC 9-23-2-1; or**
 - (B) a violation of IC 9-17-8, IC 9-18-26, IC 9-18-27, IC 9-22-4, and this article by an alleged violator or licensee initiated by the commissioner.**
- (2) ~~To suggest rules, including the following:~~
 - ~~(A) The contents of forms;~~
 - ~~(B) Methods and procedures for the investigation and evaluation of the qualifications of applicants for licenses;~~
 - ~~(C) The criteria upon which to issue, deny, suspend, and revoke licenses;~~
 - ~~(D) Procedures for the investigation into and conduct of hearings on unfair practices;~~ **conduct all hearings in accordance with IC 4-21.5, except that the board may not use an administrative law judge to conduct the hearings on protests or disputes brought under subdivision 1(A).**
- (3) To levy and collect civil penalties.**
- (4) To issue cease and desist orders.**

SECTION 31. IC 9-23-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. **(a) Upon receipt of a protest or dispute filed within two (2) years of the alleged unauthorized activity, the board shall**

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1 set the matter for a hearing under IC 4-21.5 not later than sixty
2 (60) days after the filing.

3 (b) Except for a protest or dispute initiated under section
4 8(1)(B) of this chapter, the person who files a protest or dispute
5 with the board shall pay a filing fee of five hundred dollars (\$500).
6 The filing fee shall be deposited in the motor vehicle highway fund
7 as provided by IC 9-23-2-13.

8 SECTION 32. IC 9-23-1-10 IS ADDED TO THE INDIANA CODE
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2002]: **Sec. 10.** In addition to IC 4-21.5-4, after a timely protest
11 or dispute has been filed, if it appears to the board that a person is
12 engaged or about to engage in acts or practices that constitute a
13 violation of:

14 (1) this article; or

15 (2) any rule prescribed under this article;

16 the board may apply for an injunction to a court with jurisdiction
17 without notice to the person. Upon the proper showing, the court
18 may enter a preliminary injunction or temporary restraining order
19 without bond to enforce this article.

20 SECTION 33. IC 9-23-1-11 IS ADDED TO THE INDIANA CODE
21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
22 1, 2002]: **Sec. 11.** (a) If the board determines, after a proceeding
23 conducted under IC 4-21.5 and the rules of the board, that a person
24 is violating or has violated this article or any rule or order of the
25 board issued under this article, the board may impose a civil
26 penalty not to exceed two thousand dollars (\$2,000) for each day of
27 violation and for each act of violation. A civil penalty recovered
28 under this section shall be deposited in the motor vehicle highway
29 account (IC 8-14-1) as provided in IC 9-23-2-13.

30 (b) In determining the amount of a civil penalty to be levied
31 under this section, the board shall consider:

32 (1) the severity of the violation, including but not limited to
33 the nature, circumstances, extent, and gravity of the
34 prohibited act, and the harm or potential harm to the safety
35 of the public;

36 (2) the economic damage to the public caused by the violation;

37 (3) the history of any previous violations by the person;

38 (4) any efforts made to correct the violations by the violator;

39 (5) factors relevant to establishing the civil penalty in an
40 amount sufficient to deter future violations; and

41 (6) other matters that justice requires.

42 SECTION 34. IC 9-23-1-12 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 12. (a) If the board finds that a person is violating this article or any rule or order of the board issued under this article, the board may serve a notice to require the person to appear and show cause as to why a cease and desist order should not be issued concerning the violation. A temporary cease and desist order may be granted with or without bond or other security if:

(1) the order is necessary to the performance of the duties delegated to the board or is otherwise necessary for maintaining the status quo between two (2) or more adverse parties before the board;

(2) a party before the board is entitled to relief demanded of the board, and all or part of the relief requires the restraint of some act prejudicial to the party;

(3) a person:

(A) is performing;

(B) is about to perform; or

(C) is allowing or encouraging the performance of;

an act relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board, and the act would tend to render the board's order in that case to no effect; or

(4) substantial injury to the rights of a person subject to the board's jurisdiction is threatened irrespective of any remedy at law.

(b) Proceedings under this section are governed by IC 4-21.5 and the board's rules relating to contested cases to the extent the rules are not inconsistent with IC 4-21.5. Temporary cease and desist orders remain in effect until vacated or until ninety (90) days after the date of issuance. Permanent cease and desist orders may be issued under IC 4-21.5-3. Appeal of a temporary cease and desist order shall be made to the board before seeking judicial review. Appeal by judicial review of a permanent cease and desist order shall be made under IC 4-21.5-5.

SECTION 35. IC 9-23-1-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) Actions under this chapter shall be commenced within two (2) years after the cause of action accrues. However, if a person liable conceals the cause of action from the knowledge of the individual entitled to bring the action, the period before the discovery of the cause of action by the individual entitled shall be excluded in determining the time limit for the

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commencement of the action.

(b) If a cause of action accrues during the pendency of any civil, criminal, or administrative proceeding against a person brought by the United States or any of its agencies under the antitrust laws, the federal Trade Commission Act (15 U.S.C. 41 et seq.), any other federal act, or laws regarding franchising, the action may be commenced not later than one (1) year after the final disposition of the civil, criminal, or administrative proceeding.

SECTION 36. IC 9-23-1-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 14. (a) Before the commissioner may file a petition with the board under section 8(1)(B) of this chapter regarding a violation of IC 9-17-8, IC 9-18-26, IC 9-18-27, IC 9-22-4, this article, or any rule governing the sale, distribution, or advertising of vehicles, the commissioner must have issued a warning to the alleged violator.

(b) The commissioner shall issue a violation citation for each subsequent recurrence of a violation for which the commissioner has issued a warning.

(c) Evidence of the warning and subsequent violation citations shall be provided with the filing for a hearing with the board under section 8(1)(B) of this chapter.

SECTION 37. IC 9-23-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. The following persons must be licensed under this article to engage in the business of buying or selling motor vehicles:

- (1) An automobile auctioneer.
- ~~(2) A broker.~~
- ~~(3) (2) A converter manufacturer.~~
- ~~(4) (3) A dealer.~~
- ~~(5) (4) A distributor.~~
- ~~(6) (5) A distributor branch.~~
- ~~(7) (6) A distributor representative.~~
- ~~(8) (7) A factory branch.~~
- ~~(9) (8) A factory representative.~~
- ~~(10) (9) A manufacturer.~~
- ~~(11) (10) A transfer dealer.~~
- ~~(12) (11) A wholesale dealer.~~

SECTION 38. IC 9-23-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. The license issued to a factory representative or distributor representative must state the name of the employer. Within ten (10) days after a change of employer,

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the holder shall mail the license to the bureau and indicate the name and address of the holder's new employer. The bureau shall endorse the change on the license and return the license to the licensee in care of the licensee's new employer. A factory representative, distributor representative, ~~or~~ wholesale dealer ~~or broker~~ must have a license when engaged in business and shall display the license upon request. A temporary license for a factory representative ~~or~~ distributor representative ~~or broker~~ may be issued for a period up to one hundred twenty (120) days pending investigation by the bureau of the applicant's qualification for a license.

SECTION 39. IC 9-23-3-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 0.5. As used in this chapter, "broker" means a person who, for a fee, a commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale, for purposes other than resale, of a new or used motor vehicle and who is not:**

- (1) a dealer or an employee of a dealer;**
- (2) a distributor or an employee of a distributor; or**
- (3) at any point in the transaction, the bona fide owner of the vehicle involved in the transaction.**

SECTION 40. IC 9-23-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. It is an unfair practice for an automobile auctioneer, a wholesale dealer, ~~or~~ a transfer dealer, ~~or a broker~~, in connection with the auctioneer's ~~or~~ dealer's ~~or broker's~~ business, to use false, deceptive, or misleading advertising or to engage in deceptive acts or practices.

SECTION 41. IC 9-23-3-25 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 25. It is an unfair practice for a person to act as, offer to act as, or hold oneself out to be a broker in the advertising, buying, or selling of any new or used vehicle.**

SECTION 42. IC 9-23-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. **(a)** A person who violates this article or a rule or order of the bureau issued under this article is subject to a civil penalty of not less than fifty dollars (\$50) and not more than ~~one two~~ thousand dollars ~~(\$1,000)~~ **(\$2,000)** for each day of violation and for each act of violation, as determined by the ~~court~~ **board**. All civil penalties recovered under this article shall be paid to the state.

(b) The commissioner may suspend or revoke the license of any person licensed under this article who has not complied with an

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1 **order of the bureau issued under this article within thirty (30) days**
 2 **after the issuance of the order.**

3 SECTION 43. IC 9-23-6-8 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. At the request of the
 5 bureau, the attorney general shall institute and conduct an action in the
 6 name of the state for:

- 7 (1) ~~the injunctive relief or to recover the civil penalty provided by~~
 8 **recovery of a penalty assessed under** section 4 of this chapter;
 9 (2) the injunctive relief provided by section 6 of this chapter **or**
 10 **by IC 9-23-1-10;** or
 11 (3) both.

12 SECTION 44. IC 9-29-8-4 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. The fee for a factory
 14 representative, distributor representative, wholesale dealer, transfer
 15 dealer, **or** converter manufacturer ~~or broker~~ under IC 9-23-2 is twenty
 16 dollars (\$20).

17 SECTION 45. THE FOLLOWING ARE REPEALED [EFFECTIVE
 18 JULY 1, 2002]: IC 9-17-4-5; IC 9-23-6-7.

19 SECTION 46. [EFFECTIVE JULY 1, 2002] (a) **Notwithstanding**
 20 **IC 9-23-1-2, as amended by this act, the requirement that a ninth**
 21 **member be added to the motor vehicle sales review board does not**
 22 **apply to the motor vehicle sales review board until January 1,**
 23 **2003.**

24 (b) **The initial term of the ninth member begins January 1, 2003.**

25 (c) **This SECTION expires December 31, 2003.**

26 SECTION 47. [EFFECTIVE JULY 1, 2002] (a) **Notwithstanding**
 27 **IC 9-23-1-2, as amended by this act, the requirement that members**
 28 **of the motor vehicle sales review board must have maintained**
 29 **continuous residency in Indiana for the two (2) years before**
 30 **appointment does not apply to members of the former motor**
 31 **vehicle sales advisory review board who were appointed under**
 32 **IC 9-23-1-2(a)(1), IC 9-23-1-2(a)(3), IC 9-23-1-2(a)(4), and**
 33 **IC 9-23-1-2(a)(5), before amendment by this act.**

34 (b) **A member of the former motor vehicle sales advisory board,**
 35 **who was appointed before July 1, 2002, and who has not**
 36 **maintained continuous residency in Indiana for the two (2) years**
 37 **before July 1, 2002, shall serve the term of the appointment.**

38 (c) **This SECTION expires December 31, 2003.**



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